IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 22013 of 2002

Between:

B.V.B. Subba Rao, Retired Head Master, R/o. Bapatla, Guntur District.

... PETITIONER

AND

1. The District Educational Officer, Guntur District, Guntur.

2. The State of AP rep.by its Secretary to Government, Department of

Secondary Education, Hyderabad.

(R-2 is impleaded as per Court Order in WPMP.No.32173 of 2002 dated 22.01.2003)

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the District Educational Officer, Guntur in withholding the gratuity of Rs.42,944/- to be paid to the petitioner as illegal and contrary to law, and it is consequently prayed that this Hon'ble court may be pleased to direct the respondent to take all necessary steps that all the gratuity benefits may be paid to the petitioner in full including the amount withheld without any further delay taking 17 years 4 months and 6 days as qualifying service.

Counsel for the Petitioner: MR.S.R.SANKU

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

The Court made the following order:

ORDER:

Petitioner seeks to issue a Writ of Mandamus declaring the action of the District Educational Officer, Guntur, in withholding the gratuity amount of Rs.42, 944/- to be paid to him as illegal and contrary to law and to direct the respondents to pay the said gratuity amount.

Petitioner retired as Head Master at A.V.V. High School, Guntur District on 30.04.2000. It is the case of the petitioner that the management of the school informed him one year before his retirement that his service record has been lost and the same has not been recovered. Therefore, the petitioner filed WP.No.19928 of 1999 to issue a direction to the management and District Educational Officer, Guntur, for reconstruction of the service record. The said writ petition was disposed of on 13.10.2000 directing the respondents to reconstruct the service record within eight weeks but unfortunately the service register was reconstructed with certain inconsistencies and irregularities only after 76 weeks. It is stated that the petitioner is having qualifying service of 17 years, 04 months, 6days but the same was computed as 16 years, 04 months, 13 days.

It is stated that after his retirement pension was not settled. Therefore, he requested the District Educational Officer to sanction anticipatory gratuity as per Rule 51 of Andhra Pradesh Revised Rules, 1980. As his request was not considered he filed WP.No.15872 of 2000. This Court by order dated 24.04.2001 in WPMP.No.10418 of 2000 and WPMP.No.20189 of 2000 dated 20.03.2001 directed the respondents to pay anticipatory pension and anticipatory gratuity as per Rule 51(C) of Revised Pension Rules of 1980.

Pursuant to the said orders, the District Educational Officer, Guntur, passed the impugned proceedings in RC.No.12457/B3/2000 dated 13.06.2001 sanctioned the anticipatory gratuity of Rs.42,944/- but withheld the said anticipatory gratuity on the ground that an amount of Rs.44,059/- is to be recovered from the petitioner. In the said order it is stated that the petitioner irregularly drew salary from 12.07.1978 to 17.09.1979 amounting to Rs.6,875/- as his appointment was only approved on 18.09.1979, the period from the date of his appointment to the date of his approval has not been regularized. It is stated that Rs.25,957/- is an excess earned leave amount availed for 83 days in his entire service and an amount of RS.625/- is excess leave on half pay availed for 4 days and an amount of Rs.10,602/- is to be recovered under various audit objections. Therefore, an amount of Rs.44,059/- is to be recovered from Anticipatory pension amount of Rs.42,499/-, where the amount to be recovered from the petitioner is more than his anticipatory pension.

It is the case of the petitioner that the order passed by the District Educational Officer dated 13.06.2001s is illegal, unsustainable and without jurisdiction. Admittedly, petitioner retired from service on 30.04.2000 and thus the relationship of employer and employee ceases to exist. As on the date of retirement the said amounts were not determined to be payable or to be recovered from the petitioner. After retirement it is not open for the respondent to fix-up any liability on the alleged salary irregularly drawn or excess earned leave and towards the amount to be recovered under various audit objections without following the principles of natural justice.

It is further the case of the petitioner that the Correspondent after verifying the records of the school found that the petitioner is entitled to salaries from 12.09.1978 to 17.09.1979 and accordingly paid the said salary. Therefore, it cannot be said that the salary was irregularly

drawn for the above period. It is further stated that the there was no excess utilization of earned leave by him in his entire service. However, there was a difference of opinion in preparing the earned leave account and it was made clear that he did not avail any excess earned leave as alleged in the impugned proceedings by the District Educational Officer dated 13.06.2001. Therefore, the action of the respondents in determining an amount of Rs.25,957/- as excess earned leave is incorrect and arbitrary. Insofar as audit objections are concerned the amount under the special fee funds and buildings fee fund not deposited is incorrect and without issuing any notice and without providing any opportunity the respondents cannot withhold the said amount of Rs.10,602/- due to audit objections after his retirement.

It is further stated that as per the guidelines issued by the Government of Andhra Pradesh, Finance and Planning Department in Memo.No.37254/361/A2/Pen.I/98 dated 04.07.1998, the Government reserves the right of withholding pension or gratuity or both, either in full or in part, recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the Government if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service.

Admittedly, petitioner retired from service on 30.04.2000. No departmental proceedings are initiated to fix-up the liability for recovery of the said amount from the petitioner while he was in service.

Learned Government Pleader appearing for the respondents submits that as per the order of the Government in G.O.Ms.No.230 Finance and Planning Department dated 08.06.1985 certain guidelines have been issued for payment of Anticipatory Gratuity.

Perusal of the Clause 5 of the G.O.Ms.No.230 dated 08.06.1985 regarding the issue relating to the payment of Anticipatory Gratuity to the retired employee discloses that whenever there is a delay in releasing pensionary benefits to the pensioner, anticipatory gratuity should be released to the extent of 80 per cent of the amount worked out by the Departmental authorities with reference to the records available and the qualifying service verified, pending verification and authorization of the full gratuity by the Accountant-General, after adjusting all the dues known to the department upon the date of release of the

anticipatory gratuity.

As per Clause 5, the pensioner is entitled to 80 per cent of the Anticipatory Pension after adjusting of the dues known to the department upon the date of the release of the Anticipatory Gratuity. It is stated that all the aforesaid dues are known to the department by the date of release of the Anticipatory Gratuity and therefore, the said order of the District Educational Officer dated 13.06.2001 in withholding the said amount from the Anticipatory Gratuity is legal and valid as contended by the Government Pleader.

As per the guidelines issued by the Finance Department in the said memo dated 04.07.1998 such of those dues either in the departmental proceedings or in the Court proceedings while the employee is in service alone are liable to be held in part or full.

The only question that arises for consideration is whether the District Educational Officer is entitled to fix-up the liability of the amounts sought to be recovered from the Anticipatory Pension vide his letter dated 13.06.2001

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Admittedly, no orders have been passed either with regard to the salary irregularly drawn from 12.07.1978 to 17.09.1979 or with regard to the excess earned leave availed for 83 days or with regard to the amounts recoverable due to the audit objections. Thus, the amounts sought to be recovered from the petitioner were fixed up for the first time by the District Educational Officer vide his orders dated 13.06.2001. The said order was passed pursuant to the directions of this Court dated 29.03.2001 in WPMP.No.20189 of 2000 in WP.No.15872 of 2000 for payment of Anticipatory Pension.

Admittedly, no enquiry was pending against the petitioner as on the date of his retirement. No charge sheet was issued for the salary irregularly drawn or for availing excess earned leave or for the recovery of the amounts due to audit objections. Therefore, it is not open for the respondents to pass the impugned order for recovery of the said amount in the absence of initiation of any proceedings while he was in service.

This Court held in a catena of decisions that once an employee retires from service the

relationship between the employer and employee ceases to exist. No rule is brought to my notice authorizing the respondents either to take disciplinary proceedings or to fix-up the said liability on the petitioner after his retirement.

I am of the view that the G.O.Ms.No.230 dated 08.06.1985 also does not authorize the respondents to unilaterally fix-up the amount to be recovered from the retired employee after his retirement.

For the aforesaid reasons, I do not see any justification on the part of the respondents in not releasing the entire anticipatory gratuity amount of Rs.42,944/-. Accordingly, the order of the District Educational Officer dated 13.06.2001 is set aside.

The writ petition is accordingly allowed directing the respondents to release the anticipatory gratuity amount of Rs.42,944/- to the petitioner as expeditiously as possible. No costs.

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V. ESWARAIAH, J

November 3, 2004

Dsk

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Wednesday the Third day of November Two thousand and Four.

TO

1. The District Educational Officer, Guntur District, Guntur.

2. The Secretary to Government of AP, Department of Secondary Education, Hyderabad.

3. Two CCs to GP For School Education, High Court Buildings, Hyderabad (OUT).

4. Two CD Copies.